

CONCLUSIONS OF LAW

The Board must consider whether it has jurisdiction at this juncture to consider the issue. This matter was simply brought on a motion to dismiss. The order appears to be interlocutory as it was entered during the pendency of the case.

As an initial matter, the Appeals Board has previously ruled that it had jurisdiction over an appeal from a judge's denial of a K.S.A. 44-523(f) motion to dismiss, reasoning that to do otherwise would render meaningless the statutory process of obtaining a dismissal to avoid the time and expense of proceeding to a final conclusion.² However, the Appeals Board subsequently ruled otherwise, noting that a judge's denial of a motion to dismiss was an interlocutory order, not a final order.³

The Kansas Workers Compensation Board has jurisdiction to review decisions of administrative law judges only to the extent provided in the Act. The Board has jurisdiction to review preliminary hearing orders as to disputed issues of compensability as specifically set forth in K.S.A. 44-534a(a). The Board also has jurisdiction to review preliminary hearing orders under K.S.A. 44-551 if it is alleged that the judge exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing. Pursuant to K.S.A. 44-551, the Board is provided with jurisdiction to review final orders, awards, or modifications of awards entered by an administrative law judge. Such jurisdiction does not generally extend to interlocutory orders.

The Order of which respondent seeks review is not a preliminary hearing order. It is an order denying respondent's motion to dismiss the claim based on K.S.A. 2011 Supp. 44-523(f). The Order is not a final order.

Generally, a decision or order is final only when it resolves all issues between the parties and reserves no further question for future action. The Kansas Court of Appeals, however, has recognized an exception to this general rule in certain cases where there is no other effective means to review the decision. The court stated three criteria which make an order a final order. The order may be final even if it does not resolve all issues between the parties if the order: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is not effectively reviewable on appeal from a final judgment.⁴

² *Salama v. Hen House Market*, No. 1,009,525, 2008 WL 2673163 (Kan. WCAB June 30, 2008).

³ *Stupasky v. Hallmark Marketing Corp.*, No. 1,031,988, 2012 WL 1142954 (Kan. WCAB Mar. 14, 2012); *Pham v. Dold Foods, Inc.*, Nos. 1,013,951 & 1,013,952, 2011 WL 6122903 (Kan. WCAB Nov. 22, 2011).

⁴ *Skahan v. Powell*, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982).

Respondent's motion to dismiss, having been denied by Judge Belden, does not constitute a final order as it can be raised at a future time.⁵ The Board concludes Judge Belden's Order denying respondent's motion to dismiss is an interlocutory order made during the litigation of a worker's compensation case. It is an order that Judge Belden has authority to make during the trial process. The Board lacks jurisdiction to review such an order until it is contained in a final order or award. Because the denial of the motion to dismiss is an interlocutory decision and not a final decision, the appeal must be dismissed.

The Appeals Board adopts the rationale from *Stupasky*⁶ and *Pham*⁷ that respondent's appeal stems from an interlocutory order. Since Judge Belden's order denying respondent's motion to dismiss is not a final order, but rather is interlocutory in nature, the Board lacks jurisdiction to review the merits of the issue raised by respondent. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.⁸ Accordingly, respondent's application for Board review is dismissed.

CONCLUSION

(1) The Board does not have jurisdiction at this point in the claim to review Judge Belden's December 29, 2011 Order denying respondent's motion to dismiss.

(2) Respondent's request for Board review is dismissed for lack of jurisdiction.

WHEREFORE, the Board hereby dismisses the respondent's application for Board review.

IT IS SO ORDERED.

Dated this _____ day of January, 2013.

⁵ However, had respondent's motion to dismiss been granted, it would have been a final order under K.S.A. 44-551 and would have satisfied the three criteria set forth in *Skahan*.

⁶ *Stupasky v. Hallmark Marketing Corp.*, No. 1,031,988, 2012 WL 1142954 (Kan. WCAB Mar. 14, 2012).

⁷ *Pham v. Dold Foods, Inc.*, Nos. 1,013,951 & 1,013,952, 2011 WL 6122903 (Kan. WCAB Nov. 22, 2011).

⁸ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

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